

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 597 of 1979

with

FIRST APPEAL Nos. 598 of 1979 and 599 of 1979

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?
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POST MASTER GENERAL

Versus

KODARBHAI MOHANBHAI PATEL

Appearance:

1. First Appeal No. 597 of 1979
MR M.R. SHAH for Petitioner No. 1-3
MR YAGNIK FOR MR. GIRISH PATEL for Respondent No. 1-3
MS VASUBEN P SHAH for Respondent No. 4
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CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 11/03/2002

COMMON ORAL JUDGEMENT

1. Post Master General (Union of India), Gujarat State and others-appellants-original opponents have filed these First Appeals against judgement and decree dated 23.11.1978 passed by the Motor Accident Claims Tribunal, Sabarkantha, Dist. Himatnagar in M.A.C. Application No. 131 of 1977, 132 of 1977 and 133 of 1977. The learned judge by the impugned judgement was pleased to award compensation of Rs. 5833.33 from the opponents together with interest at the rate of 6% per annum from the date of application till realisation with proportionate costs. The learned judge has awarded compensation in all these matters.

2. As the learned judge has given common judgement in all the Motor Accident Claim Petitions, I am also disposing of all these First Appeals by this common judgement.

3. This common judgement shall govern disposal of these three appeals arising out of three Motor Accident Claim Petition which are filed for the compensation for the accidental death of the deceased Mohanbhai who has lost his life during the motor vehicular accident which had occurred on 19.7.1977 at about 11.30 a.m. on the National Highway No. 8 near Salal village by the motor van No. GJ-I-5393 being driven by Patel Becharbhai Kesarbhai-original opponent No. 1 - respondent No. 4 herein.

3.1 First Appeal No. 597 of 1977 is filed by the Post Master General which arises out of Motor Accident Claim Petition No. 131 of 1977. Motor Accident Claim Petition No. 131 of 1977 was filed by Kodarbhai Mohanbhai Patel son of the deceased. First Appeal No. 598 of 1977 arises out of M.A.C. Petition. No. 132 of 1977 which is filed by Jiviben, Wd/o Mohanbhai Hathibhai. First Appeal No. 599 of 1979 arises out of M.A.C.P. No. 133 of 1978 which is filed by Somabhai Patel. In each of these applications, the applicants claimed total compensation of Rs. 9,999/-.

3.2 The facts which are common in all the claim petitions are as under:

3.3 In each of the applications the case of the applicants (opponent Nos. 1 to 3 herein) is that the accident had occurred on 19.7.1977 at 1.30 a.m. on the National Highway No. 8 near Salal village, Sabarkantha

District. It is the case of the applicants that at the relevant time the deceased Mohanbhai was passing through the above said road and he was on the correct side of the road. It is further the case of the applicants that at that time original opponent No. 1 who was driving the vehicle in a rash and negligent manner had knocked down the deceased on the road. The deceased Mohanbhai suffered fatal injuries and he succumbed to the injuries at 1.00 p.m. in the Civil Hospital, Himatnagar. Thus it is the case of the applicants in each of the applications that the deceased died because of rash and negligent driving of the driver-opponent No. 1.

3.4 So far as the quantum of compensation is concerned, it is the case of the applicants that the deceased was aged 52 years at the time of his death and was likely to live upto the age of 70 years. It is further the case of the applicants that they are entitled to an amount of Rs. 4000/- to Rs. 5000/- for mental shock, pain, and suffering. They have also claimed a sum of Rs. 4000/- to Rs. 5000/- under the head medical and funeral expenses of the deceased. The applicants have also averred that they suffered loss of Rs. 1000/- per month in the agricultural income because of the accidental death of the deceased. It is further their case that in the absence of deceased they are obliged to engage an agricultural labourer at the rate of Rs. 200/- per month.

3.5 Original Opponent No. 1 Patel Becharbhai Kesarbhai filed his written statement at Exh. 13 in each of the applications. Moreover, he filed his written statement together with original opponent No. 4, namely, the Assistant Engineer, Co-axiol, Near Civil Hospital, Himatnagar in each of the applications and the said written statement is at Exh. 22 in M.A.C. Case No. 131 of 1977. In the rest of the two matters the said written statement is at Exh. 19. Original opponent Nos. 1 and 4 denied all the allegations regarding the accident and rash and negligent driving made by respective applicants in the petitions.

3.6 Original opponent No. 1 firstly contended in his written statement that he had seen two persons coming from opposite direction and therefore he sounded the horn of his vehicle. His further case was that because of the sounding of the horn the two persons coming from the opposite direction had scared and therefore they had dashed with the left side of the motor vehicle. Opponent No. 1 further averred that he had tried his level best to stop the motor vehicle by applying the brakes. He has

further contended that the accident had occurred and the deceased was knocked down because of his own rashness and negligence. Any how, in the joint written statement, opponent No. 4 has denied all the allegations of the manner in which the accident had occurred. In the written statement both the opponents have further denied all the allegations regarding age, expectancy of life, monthly income of the deceased and loss in income. They have lastly contended that the deceased himself was responsible for the unfortunate event. In the light of the above denials and contention, the opponents have prayed for dismissal of the claim petitions against them.

4. Before the trial court the issues were framed at Exh. 15. Documentary evidence, namely, panchnama at Exh. 35, inquest panchnama at Exh. 39. However, as regards oral evidence, Somabhai Mohanbhai, son of the deceased who is applicant in M.A.C. Application No. 133 of 1977 has given his testimony which is at Exh. 27. He has almost reiterated the facts which are stated in the Motor Accident Claim Application. He was cross-examined but nothing has come into record which can throw light regarding the age of the deceased and income of the deceased. A person who was walking along with the deceased has narrated about the accident. He has stated that the deceased was walking on the correct side of the road. He has also stated that the accident took place because of rash and negligent driving of opponent No. 1 driver.

4.1 The panch witness Prabhatsing whose evidence is at Exh. 34, has proved the panchnama at Exh. 35. He has stated that the tar road was 24 ft. wide. The claimant has also produced panchnama at Exh. 35. From the panchnama it appears that the tar road was 24 ft. wide and on the said road on both sides there was a kachha road of 6 ft. The vehicle has been driven from left to right. From the record it appears that there were 80 ft. brake marks on the road and the brake marks were visible at that time. There was also damage to the vehicle. The inquest report is also produced at Exh. 39 which showed that the deceased had died at about 1.00 p.m. on that day. The deceased has suffered serious injuries on the head and also there were other injuries on other parts of the body.

4.2 As regards original opponent No. 1 Patel Becharbhai Kesarbhai, driver of the vehicle, he has been examined at Exh. 14. He has stated that he was driving the vehicle on the correct side of the road and two persons were travelling at that time. He had also blown

horn. However, because the man while walking had fallen down, the accident took place. He was not rash and negligent in driving the vehicle.

4.3 On this evidence the learned judge came to the conclusion that the applicant proved that the deceased Mohanbhai Hathibhai Patel had died as a result of rash and negligent driving of the motor vehicle No. GJ-I 5393 driven by original opponent No. 1 at the time and the place of accident. The learned judge also held opponent Nos. 2 to 4 are vicariously liable for the said act of opponent No. 1. As regards compensation, the learned judge held that the applicants are entitled to total compensation of Rs. 5833.33 from opponent Nos. 1 to 4 together with interest at the rate of 6% per annum from the date of application till realisation with proportionate cost.

5. Mr. M.R. Shah, learned counsel for the appellants, has tried to assail the judgement and award of the learned judge. He has raised the following contentions. He submitted that the Tribunal has erred in holding that the applicants proved that deceased Mohanbhai Hathibhai died as a result of rash and negligent driving of Motor Vehicle No. GJ-I-5393 driven by opponent No. 1 at the time and place of accident. He further submitted that the tribunal has erred in holding that applicants proved that opponent Nos. 2 to 4 are vicariously liable for the said act of opponent No. 1. The Tribunal has also erred in holding that the applicants are entitled to claim compensation of Rs. 5833.33.

6. On the other hand Mr. Yagnik, learned advocate for Mr. Girish Patel, learned senior counsel, has tried to support the judgement of the Tribunal.

7. I have gone through the evidence on record both oral and documentary. From that evidence it is very clear that the deceased was walking on the right side of the road and due to rash and negligent driving of original opponent No. 1 the deceased met with an accident and ultimately he died. Panchnama clearly reveals that the vehicle had gone for about 70 ft. to 80 ft. on the road after putting brake. This shows that the vehicle was driven with a great speed and the driver of the vehicle could not control the speed. The maxim *res ipsa locuter* clearly applies in the facts and circumstances of the case. In view of the same, the finding of the learned judge that the driver of the vehicle in question was rash and negligent in driving the

vehicle is confirmed. In my view the accident had occurred on 19.7.1977 and the deceased Mohanbhai Hathibhai had died as a result of the rash and negligent driving of the vehicle in question by original opponent No. 1. From the evidence on record particularly written statements filed by opponent No. 1 and 4, it follows that the relationship between the driver and opponent Nos. 2 to 4 was that of servant and masters. Therefore, opponent Nos. 2 to 4 are vicariously liable and therefore I hold that opponent Nos. 2 to 4 are vicariously liable for the act of opponent No. 1 driver.

8. As regards compensation, the applicants have produced at Exh. 37 certified copy of village Form No. 8A which showed that the total holding of the deceased was 11 acres and 12 gunthas. The sons and widow of the deceased are young and healthy people and they can take up the work of cultivating the suit land. Any how because of the absence of the personal interest and supervision of the deceased there would be a loss of Rs. 1000/- per year in the agricultural income. Moreover, they would be obliged to employ one agricultural worker who would work as a substitute of the deceased at the lands. Taking the amount of Rs. 5/- per day as wage of the agricultural labourer the loss per year to the applicants would come to Rs. 1800/-. The deceased was aged 52 years. Therefore, he must have lived upto a further period of at least 10 years. It may be noted that the learned judge has taken only 5 years multiplier which is absolutely reasonable, legal and just. The learned judge has taken multiplier of five and held that the loss to the applicants would come to Rs. 14,000/-. The learned judge has added Rs. 3000/- as conventional amount for the loss of expectancy of live and Rs. 500/- as the funeral charges. The learned judge thus determined the total amount of Rs. 17,500/-. He has divided the said amount of Rs. 17,500/- between three applicants and each applicant shall be entitled to compensation of Rs. 5833.33 with interest at the rate of 6% per annum and proportionate cost from original opponent Nos. 1 to 4.

9. In view of the above facts and circumstances of the case, I fully agree with the reasoning given by the learned judge. I do not find any infirmity in the judgement and award passed by the learned judge. The compensation award of the learned judge is on a lower side but it will not be proper for me to consider. However, I do not entertain the appeals filed by Union of India and others where they tried to assail the judgement and award of the learned judge awarding a compensation of

Rs. 5833.33 to each of the applicants.

10. In my view there is no merit in these appeals.
The appeals are therefore dismissed. The impugned
judgement and award of the Motor Accident Claims Tribunal
dated 23.11.1978 is confirmed. No order as to costs.

(K.M. MEHTA, J)
(pkn)